

STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS

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BEFORE THE

Illinois Commerce Commission

DOCKET NO. 91-0090

IN THE MATTER OF:

Nicor Cross Ex. 3

ILLINOIS COMMERCE COMMISSION
On Its Own Motion

PLACE: Springfield, Illinois

DATE: July 10, 1991

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ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION)
On Its Own Motion)
) Docket No.
Investigation concerning issues)
related to coal tar clean-up) 91-0090
expenditures with respect to)
Northern Illinois Gas Company.)

Springfield, Illinois
July 10, 1991

Met, pursuant to notice, at 9:15 A.M.

BEFORE:

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By Kathy Broadbus, Reporter

I N D E X

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	RUDOLPH BERTSCHI				
4	By Ms. Senn	721		817	
5	By Mr. Griffin		727		
6	By Mr. Lopez		749		
7	By Mr. Stoller		766		
8	By Mr. Bramlet		782		
9	By Mr. Pasek		783		
10	By Examiner Jones		820		
11					
12	HARLAN DELLSY				
13	By Mr. Bernstein	826		839	
14	By Mr. Stoller		828		841
15	By Ms. Blackwell		833		
16	By Ms. Senn		836		
17	By Mr. Lopez		838		
18	By Examiner Jones		845		
19					
20	PHILIP BARNHARD				
21	By Mr. Bramlet	849			
22	By Mr. Stoller		851		
23	By Ms. Blackwell		855		
24	By Ms. Senn		859		
25	By Mr. Ruxin		863		
26	By Examiner Jones		864		
27					
28	HUGH LARKIN				
29	By Ms. Blackwell	869			
30	By Mr. Pasek		876/947		
31	By Mr. Lopez		901		
32	By Mr. Ruxin		904/945		
33	By Ms. Cohen		912/933		
34	By Mr. Griffin		918		
35	By Mr. Stoller		931		
36	By Examiner Jones		951		
37					
38	SCOTT A. STRUCK				
39	By Mr. Stoller	953		969	
40	By Mr. Griffin		955		
41	By Ms. Hightman		960		975
42	By Mr. Ruxin		--		970
43	By Examiner Jones		971		

I N D E X (Continued)

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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BILL L. VOSS

By Mr. Stoller

979

By Mr. Ruxin

984

By Mr. Bernstein

993

By Ms. Hightman

1013

By Ms. Senn

1053

By Ms. Cohen

1061

EXHIBITSIDENTIFIEDADMITTED

Iowa-Illinois 1 and 2

715

CUB 1.0

715

726

Peoples Gas Cross 1

760

823

Commonwealth Edison 1

825

828

Mt. Carmel 1

848

851

OPC/AG 1.0

868

875

Peoples Gas Cross 2

901

903

NIGas Cross 1

912

914

ICC St. AD 2.00

953

955

ICC St. Exhibits AD 1.00 and
1.01 and ICC St. Rebuttal
AD 1.00

979

983

NIGas Cross 2

1061

PROCEEDINGS

(Whereupon prior to the hearing Iowa-Illinois Exhibit Nos. 1 and 2 and CUB Exhibit No. 1.0 were marked for identification.)

7 EXAMINER JONES: Pursuant to due notice, I call
8 for hearing Docket Nos. 91-0080 through 91-0095.
9 These are all entitled in part Illinois Commerce
10 Commission on its own motion, investigation
11 concerning issues related to coal tar cleanup
12 expenditures. I will call these cases and we will
13 once again hearing these cases simultaneously as
14 though consolidated. Questions relating to
15 consolidation remain to be resolved.

16 We will proceed through the list of
17 utility companies first and ask that appearances be
18 entered as we go. The first of these is Docket
19 91-0080, Central Illinois Light Company.

20 MR. FITZHENRY: Edward J. Griffin of Defrees &
21 Fiske, Suite 1100, 200 South Michigan Avenue, Chicago
22 60604, appearing on behalf of Central Illinois Light

1 calls for the Staff witnesses to testify, is that
2 correct, Mr. Stoller?

3 MR. STOLLER: Yes, that's correct. We have
4 Mr. Struck on the stand.

5 EXAMINER JONES: Would you stand and be sworn,
6 please?

7 (Whereupon the witness was
8 sworn by the Examiner.)

9 (Whereupon at this point, the
10 Court Reporter marked for
11 identification purposes
12 ICC St. Exhibit AD 2.00, after
13 which the following
14 proceedings were conducted:)

15 SCOTT A. STRUCK,

16 a witness, having been first duly sworn upon his
17 oath, testified as follows:

18 DIRECT EXAMINATION CONDUCTED

19 BY: MR. STOLLER

20 Q. Would you please state for the record
21 your full name, please?

22 A. My name is Scott A. Struck.

1 Q. By whom are you employed, Mr. Struck?

2 A. I am an Accountant in the Auditing
3 Section of the Accounting Department of the Public
4 Utilities Division of the Illinois Commerce
5 Commission.

6 Q. Did you prepare written testimony and
7 exhibits for submittal in this proceeding, or
8 written testimony, rather?

9 A. I prepared written testimony, yes.

10 Q. You have before you a copy of a
11 document which has been marked ICC Staff Exhibit AD
12 2.00. It consists of a cover page and seven
13 additional pages of written
14 question-and-answer-type testimony. Did you
15 prepare that?

16 A. Yes, I did.

17 Q. Have you any additions or corrections
18 to make to it?

19 A. No, I don't.

20 Q. Is the information contained in that
21 testimony true and correct to the best of your
22 knowledge?

1 A. It is.

2 Q. If I were to ask you the questions set
3 forth in your testimony today on the stand, would
4 your answers be the same?

5 A. They would.

6 MR. STOLLER: Mr. Examiner, subject to
7 cross-examination, I move for admission into
8 evidence of ICC Staff Exhibit AD 2.00.

9 EXAMINER JONES: Any objection to that?

10 Let the record show Staff Exhibit AD
11 2.00 is hereby admitted into evidence.

12 (Whereupon ICC St. Exhibit AD
13 2.00 was admitted into
14 evidence.)

15 MR. STOLLER: Mr. Struck is available for
16 cross-examination.

17 EXAMINER JONES: Okay, who has questions for
18 Mr. Struck?

19 MR. GRIFFIN: I have some.

20 EXAMINER JONES: Mr. Griffin?

21 CROSS EXAMINATION CONDUCTED

22 BY: MR. GRIFFIN

1 Q. Mr. Struck, would you please refer to
2 Page 6 of your prepared direct testimony?
3 Beginning on Line 20, your answer recommends a
4 recovery of the after-tax cost of capital of
5 amounts deferred up until the time recovery begins,
6 is that correct, or up until the outcome of
7 litigation I guess is a better word?

8 A. That section of my testimony addresses
9 the accruing of a carrying charge, but it doesn't
10 address recovery of that carrying charge.

11 Q. Okay, so your proposal here is that the
12 Commission not determine in this proceeding whether
13 or not a carrying charge will actually be allowed,
14 but that that be determined at some later date, is
15 that what you are telling me?

16 A. That's correct.

17 Q. So for purposes of this proceeding, you
18 are simply suggesting that a utility defer, be
19 allowed to defer investigation and remediation
20 costs and be allowed to record without any promise
21 that they will recover a carrying charge on those
22 deferred amounts, is that correct?

1 A. For companies not wishing to currently
2 seek recovery of MGP site cleanup costs from
3 ratepayers in order to avoid any possible jeopardy
4 to recovery from insurance companies or other
5 potentially responsible parties through litigation
6 for those companies, that's correct.

7 Q. What is the after-tax cost of capital?
8 How do you calculate that?

9 A. The after-tax cost of capital takes
10 into consideration the fact that interest costs are
11 deductible for income tax purposes, and that tax
12 savings has the effect of reducing the cost of
13 capital on debt. The after-tax cost of capital
14 would be a calculation that would take that tax
15 effect into consideration.

16 Q. All right, let me give you just a
17 hypothetical question for clarification. Let's
18 assume the company's capital costs are 50 percent
19 equity and 50 percent debt and that the cost of
20 debt is 10 percent. Now you would allow, under
21 your proposal, an accrual of all of the equity
22 costs, but only the after-tax accrual of the

1 interest portion, is that right?

2 A. That's correct.

3 Q. Now if we assume that the tax-related
4 to the interest is 38 percent, just in round
5 figures, for state and federal income taxes, this
6 would mean that on every thousand dollars of
7 interest, \$620 would be recovered if the Commission
8 -- Strike that. \$620 would be accrued on the
9 books?

10 A. For every thousand dollars of interest,
11 yes, that would be correct.

12 Q. Now assuming the Commission later
13 allows the utility to recover that interest cost,
14 how much will be recovered, \$620? Now I am
15 separating the interest costs from the equity
16 costs. I am just looking at the interest side that
17 you have deducted to calculate the after-tax cost
18 of capital. You've got \$620 accrued on your books.
19 How much will the utility be allowed to recover?

20 A. If the Commission were to allow
21 recovery from ratepayers of the after-tax cost of
22 capital that has been accrued, the \$620 would be

1 the amount of cost that would be subject to the
2 recovery mechanism.

3 Q. In addition to the equity portion?

4 A. Right.

5 Q. Now would not that recovery of \$620 be
6 subject to income tax payments?

7 A. To the extent that the \$620 of revenue
8 translates into taxable income, it would be subject
9 to income tax.

10 Q. So that if the utility pays another 38
11 percent, it's not even going to recover the \$620,
12 is it?

13 A. Presuming that the tax on the \$620
14 would be reflected in test year expenses during a
15 rate case, it would be correct that the full \$620
16 wouldn't be recovered.

17 Q. Would not be recovered?

18 A. Would not.

19 MR. GRIFFIN: Thank you. That's all I have.

20 Thank you, Mr. Examiner. Thank you,
21 Mr. Struck.

22 EXAMINER JONES: Do other parties have any

1 questions?

2 MS. HIGHTMAN: I have got a couple of
3 questions.

4 EXAMINER JONES: Ms. Hightman?

5 CROSS EXAMINATION CONDUCTED

6 BY: MS. HIGHTMAN

7 Q. On Page 5 of your testimony, at Line 5,
8 you state that land purchased solely for
9 remediation should be expensed rather than
10 capitalized. Is it your opinion that this would be
11 consistent with GAAP and FASB?

12 A. Yes, it is.

13 Q. Mr. Griffin was just asking you some
14 questions about the carrying charge that you
15 propose be accrued during the deferral period, is
16 that correct?

17 A. That is correct.

18 Q. And can you state for the record why
19 you believe it's appropriate for the utilities to
20 accrue a carrying charge on the deferred amounts?

21 A. The deferred amounts on which the
22 companies would be accruing the carrying charge are

1 amounts for which the company is not currently
2 seeking recovery in order to avoid any possible
3 jeopardy to recovery from the insurance companies
4 or other potentially responsible parties through
5 litigation.

6 To the extent that there would be such
7 recoveries, it might be conceivable that such
8 recoveries could include some portion of a carrying
9 cost. And for that reason, I am proposing that for
10 those companies who do not wish currently to seek
11 recovery in order to avoid possible jeopardy to
12 recoveries from insurance companies or other
13 potentially responsible parties, that they accrue
14 that carrying charge so that that amount is
15 available.

16 Q. I'm not sure if I understood your
17 answer. Is it your, did you testify that you
18 believe that the recovery that the utilities might
19 get from the insurance companies might possibly
20 include a carrying charge, is that what you said?

21 A. That that might be possible, yes, or
22 from other potentially responsible parties.

1 Q. And is it because of that that you are
2 proposing that the utilities be allowed to accrue a
3 carrying charge on the deferred amounts?

4 A. That's correct.

5 Q. Is it also true that allowing the
6 utilities to accrue a deferral charge on a carrying
7 charge on the deferred amounts be made whole, given
8 the time value of money?

9 A. Accruing the carrying charge will
10 provide an amount that represents the total cost to
11 the company when the time value of the money is
12 considered. To the extent that companies seek to
13 recover that full amount from other potentially
14 responsible parties or insurance companies, that
15 amount would be available there on the books of the
16 company.

17 Q. Could I have the question and the
18 answer read back, please?

19 (Whereupon at this point in the
20 proceedings, the Court
21 Reporter read aloud the
22 requested portion of the

1 record, after which the
2 following proceedings were
3 conducted:)

4 MS. HIGHTMAN: So I think that you are
5 agreeing with me, then, that the carrying charge is
6 necessary to ensure that the utilities are made
7 whole for not only the costs that they are paying
8 out, but also for the value, the time value of the
9 money they paid out until they get recovery from
10 ratepayers or some other source, is that correct?

11 A. That's correct.

12 Q. Okay. Now as far as I understand
13 Staff's position, it's a little broader than the
14 question that is stated on Page 6, Question 12. In
15 other words, as I understand it, Staff is proposing
16 that a carrying charge be allowed on the deferred
17 balance no matter what the reason is that the
18 utility is waiting to actually seek recovery
19 through a rate mechanism, is that your
20 understanding?

21 A. Could I have the question back?

22 Q. Let me rephrase it. Maybe I didn't

1 state it clearly enough. Your Question 12 talks
2 about deferring costs solely for the reason that
3 the company is seeking recovery from either an
4 insurance company or some other responsible party,
5 and what I am asking you is isn't Staff also
6 proposing, more generally, that for any reason that
7 a utility seeks to defer the costs, that a carrying
8 charge should be applied to the deferred balance?
9 Is that consistent with your understanding of
10 Staff's position?

11 A. No, I don't believe Staff is proposing
12 generally that such a carrying cost be accrued.

13 MR. STOLLER: We might speed this up a little
14 bit. Ms. Hightman, are you referring to some other
15 testimony of some other witness to which Mr. Struck
16 could be referred?

17 MS. HIGHTMAN: I am checking to see whether my
18 understanding is correct. Just wait one minute.

19 MR. STOLLER: Mr. Examiner, might I confer
20 with the witness for a moment?

21 EXAMINER JONES: Any objection to that? Let
22 the record show no response. Yes.

1 MS. HIGHTMAN: Mr. Struck, are you still
2 conferring with your attorney?

3 MR. STOLLER: We are still trying to figure
4 out what the question is.

5 MS. HIGHTMAN: Let me ask another question. I
6 am still confused. I am trying to find something
7 in Mr. Voss' testimony. I might be just confused.

8 Is it your position that utilities
9 should only be allowed to accrue a carrying charge
10 on the deferred balance of these costs if the
11 utility can show it's awaiting recovery from either
12 an insurance company or another responsible party?

13 A. That and they are not currently seeking
14 recovery of those costs.

15 Q. Would you propose that utilities have
16 to somehow establish for Staff that they are, in
17 fact, awaiting this type of recovery from some
18 other source? Would they have to make that
19 showing?

20 A. Yes.

21 Q. And then if a utility were determined
22 to defer recovery of these costs for some other

1 reason, say, for example, an analysis of rate
2 impact on its customers, is it your opinion that
3 they should not be allowed to accrue a carrying
4 charge on the deferred balance until the time that
5 they believe it's appropriate to come in to seek
6 recovery of the costs?

7 A. There may be other situations where it
8 may be appropriate for a company to accrue a
9 carrying charge when company-specific issues are
10 addressed.

11 In my testimony, I am attempting to
12 address the situation where the company has a
13 reason for not seeking, currently seeking recovery
14 of these costs, and that specific reason is that it
15 wishes to avoid possible jeopardy to recovery from
16 other parties. Other issues that might warrant the
17 accruing of such carrying charges I think might be
18 somewhat company-specific.

19 Q. Well, I guess my question is would you
20 agree that there may be instances in which a
21 utility may decide to defer these costs other than
22 instances where they are intending to seek recovery

1 from an insurance company?

2 A. Yes.

3 Q. And in such instances, it may be
4 appropriate to so defer the cost, and then a
5 carrying charge may be applied to the deferred
6 balance?

7 A. There may be some situations.

8 Q. So you don't foreclose that by your
9 testimony?

10 A. No.

11 Q. Now just one other question. I believe
12 that you agree with me that the result of applying
13 a carrying charge to the deferred balance is to
14 ensure that the utilities are made whole, in other
15 words, to account for the time value of money, is
16 that correct?

17 A. Correct.

18 Q. Would you agree, then, that even after
19 recovery begins, amortized over whatever period the
20 costs are amortized, assuming there is an
21 amortization of the costs, that without a carrying
22 charge, the utilities are not made whole because of

1 the time value of money which is being ignored?

2 A. Lack of a carrying charge would induce
3 a sharing of the costs between the shareholders and
4 the ratepayers as addressed in Staff Witness Voss'
5 testimony.

6 Q. And therefore, even if full recovery of
7 the amortized amount is allowed, the utilities will
8 not be recovering the rest of the costs which is
9 associated with the time value of money, is that
10 right?

11 A. They would not be recovering that from
12 the ratepayers, that's correct.

13 MS. HIGHTMAN: I have no further questions.

14 EXAMINER JONES: Do other parties have some
15 cross-examination for Mr. Struck?

16 Let the record show no response.

17 Any re-direct, Mr. Stoller?

18 MR. STOLLER: We would like a couple of
19 minutes to talk about it.

20 EXAMINER JONES: How long do you need? Let's
21 make it realistic.

22 MR. STOLLER: Five.

1 EXAMINER JONES: We will take a five-minute
2 break so they can talk.

3 (Whereupon at this point in the
4 proceedings, a short recess
5 was held, after which the
6 following proceedings were
7 conducted:)

8 EXAMINER JONES: Okay, back on the record.

9 Mr. Stoller, any re-direct?

10 MR. STOLLER: I have one question on re-direct
11 for Mr. Struck.

12 RE-DIRECT EXAMINATION CONDUCTED

13 BY: MR. STOLLER

14 Q. Mr. Struck, at Page 6, Lines 23 and 24
15 of your testimony, you propose the carrying charge
16 should be accrued at the company's after-tax cost
17 of capital. Do you know why the after-tax cost of
18 capital rate was used?

19 A. The after-tax cost of capital is the
20 actual return actually earned by an asset that is
21 included in rate base.

22 Q. Now if I were to ask you for a specific

1 detailed explanation of how that is calculated,
2 could you provide it to me?

3 A. Staff Witness Voss would be better able
4 to provide a detailed explanation.

5 MR. STOLLER: No further re-direct.

6 EXAMINER JONES: Is there re-cross? Mr.
7 Ruxin?

8 RE-CROSS EXAMINATION CONDUCTED

9 BY: MR. RUXIN

10 Q. Yes, Your Honor. Mr. Struck, it's
11 true, isn't it, that the reason the after-tax rate
12 of return is what is actually earned is because
13 what is actually allowed is the before-tax rate of
14 return?

15 A. I think that might be correct, but
16 again, I believe Staff Witness Voss could provide a
17 better explanation.

18 MR. RUXIN: Thank you.

19 EXAMINER JONES: Do any other parties have
20 re-cross examination questions for Mr. Struck?

21 Okay, let the record show no response.
22

CROSS EXAMINATION CONDUCTED

BY: EXAMINER JONES

Q. Mr. Struck, could you refer to Page 6 of your testimony, please? Now you have been asked some questions regarding your answer at the bottom of that page beginning on Line 20.

Now is it your testimony that the accrual of a carrying charge on that balance would be permitted in certain circumstances but not other circumstances?

A. That's correct.

Q. And you believe that the carrying charge should be accrued in those instances described in the question on, Question Number 12 on that page?

A. That's correct.

Q. Why would it be appropriate to allow a carrying charge in those situations but not other situations?

A. The lack -- As I understand Staff Witness Voss' proposal for five-year amortization without a carrying charge, the lack of a carrying

1 charge is to allow a sharing of the costs between
2 shareholders and ratepayers. In the case where the
3 company is seeking recovery from another
4 potentially responsible party or an insurance
5 company, Staff is not proposing that those costs be
6 shared with that other party. To the extent that
7 carrying costs could be recovered, they would be
8 recorded on the company's books.

9 Q. So the amount that would be subject to
10 possible recovery from other parties would be
11 higher where there has been a carrying charge
12 allowed than it would be if there had not been a
13 carrying charge allowed, is that what you are
14 saying?

15 A. That could be, but the companies
16 conceivably might be able to recover those carrying
17 costs even if they hadn't recorded the carrying
18 charge as they went. If it were determined that
19 they could recover from those other parties
20 carrying costs, they might be able to calculate
21 what those costs were at that point.

22 Q. Now the deferral of costs which you

1 speak of would be recorded in what account, if you
2 recall?

3 A. I think they would be recorded in
4 Account 186.

5 Q. Using the guidelines which are set out
6 in the question portion of Question and Answer
7 Number 12, how would a utility know whether or not
8 it could properly record those carrying charges on
9 those deferred amounts?

10 A. The companies could follow the
11 procedure that has been followed in the past, and
12 that is to seek permission from the Commission's
13 Director of Accounting to make those accounting
14 entries.

15 Q. Are you proposing that the order in
16 this generic docket authorize the deferral
17 procedures which you have outlined on Page 6?

18 MR. STOLLER: May I consult with Mr. Struck
19 just a second?

20 EXAMINER JONES: Does anybody care?

21 Let the record show no response. Go
22 ahead.

1 A. Could I have the question back?

2 (Whereupon at this point in the
3 proceedings, the Court
4 Reporter read aloud the
5 requested portion of the
6 record, after which the
7 following proceedings were
8 conducted:)

9 A. Yes.

10 EXAMINER JONES: Now is it your testimony that
11 some sort of authorization from the Accounting
12 Department would be used in combination with
13 whatever guidelines the order established?

14 A. That's correct.

15 Q. Now would that authorization from the
16 Accounting Department be applicable for all
17 companies which wanted to defer those costs
18 pursuant to the guidelines that you have set forth?

19 A. Yes.

20 Q. On Page 4 of your testimony, Mr.
21 Struck, you state on Lines 20 and 21 the
22 Staff-proposed rider will allow recovery of

1 prudently-incurred costs payable to outside
2 parties. What is the basis for your proposal that
3 the recovery of such costs be limited to those paid
4 to outside parties?

5 A. The basis is that I think it is more
6 appropriate for the companies to seek recovery of
7 internal costs through base rates rather than
8 through the Staff-proposed rider.

9 EXAMINER JONES: Okay. That's all of the
10 questions I have for Mr. Struck.

11 Any follow-up questions, Mr. Stoller?

12 MR. STOLLER: No, sir.

13 EXAMINER JONES: Any other parties?

14 MS. HIGHTMAN: I have a couple of follow-up.

15 RE-CROSS EXAMINATION CONDUCTED

16 BY: MS. HIGHTMAN

17 Q. Just to make sure I didn't
18 misunderstand something that was stated I believe
19 in some responses to some questions by the Hearing
20 Examiner, you stated that the order in this
21 proceeding should indicate that the companies are
22 authorized to defer these coal tar expenses and to

1 accrue a carrying charge, is that correct?

2 A. I believe the response I gave also
3 included seeking permission from the Commission's
4 Director of Accounting to make those accounting
5 entries.

6 Q. But is it also true that if the order
7 should indicate that utilities are entitled to
8 something, that the Commission would anticipate
9 that they would request it?

10 A. That's correct.

11 Q. Based on the questions I asked you
12 before concerning circumstances that aren't
13 described in your testimony in the answer to
14 Question 12, other circumstances in which a utility
15 may choose to defer these costs, is it your
16 recommendation that the order should state only
17 those circumstances that are stated in Question 12,
18 or should it just generally provide that utilities
19 are allowed to defer these costs and to accrue a
20 carrying charge?

21 A. I think the order should allow for that
22 procedure for the costs I described in Question and

1 Answer 12. I don't think that the order should
2 necessarily preclude that kind of a procedure in
3 other circumstances, but those circumstances might
4 be more company-specific.

5 Q. But you agree there are circumstances
6 in which it may be perfectly appropriate to defer
7 the costs, and in those circumstances, a carrying
8 charge should be allowed to be accrued on the
9 deferred balance, isn't that your testimony?

10 A. That there may be other circumstances
11 where it would be appropriate to defer the costs,
12 and that it may be appropriate to, for the company
13 to accrue a carrying charge on those deferred
14 costs.

15 Q. Okay. Wouldn't you agree, then, that
16 the order should be clear that there are other
17 circumstances besides those outlined in Question 12
18 in which such an accrual and deferral is allowed?

19 A. In the interest of clarity, I believe
20 it may be appropriate, yes.

21 MS. HIGHTMAN: Thank you.

22 EXAMINER JONES: Anybody else?

1 Let the record show no response.

2 That concludes the questioning of Mr.
3 Struck. Thank you, sir.

4 (Witness is excused.)

5 EXAMINER JONES: Off the record.

6 (Whereupon at this point in the
7 proceedings, an off-the-record
8 discussion was held, which by
9 direction was not
10 stenographically reported,
11 after which the following
12 proceedings were conducted:)

13 EXAMINER JONES: Back on the record. Staff's
14 next witness to be called is Mr. Voss, is that
15 correct, Mr. Stoller?

16 MR. STOLLER: Yes, sir.

17 EXAMINER JONES: Okay, sir, would you remain
18 standing and raise your right hand?

19 (Whereupon the witness was
20 sworn by the Examiner.)

21 EXAMINER JONES: Please be seated.

22 (Whereupon at this point, the